

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

FILED  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

06 OCT 31 PM 4:28

CLERK-ALBUQUERQUE

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 05-1849 JH

DALE JARVIS, MELANIA KIRWIN, et al.

Defendants,

**DEFENDANT'S KIRWIN'S JOINDER IN DEFENDANT  
FITZNER'S MOTION FOR CO-CONSPIRATOR STATEMENT  
AND SUPPORTING MEMORANDA**

COMES NOW Defendant Melania Kirwin by her Court-appointed attorney, John F. Moon Samore, Esq., pursuant to the Rules, and particularly Fed R. Crim. P. 7(f), to join in Defendant Fitzner's Motion for Bill of Particulars as to count 3, and, to further, in support thereof, STATE:

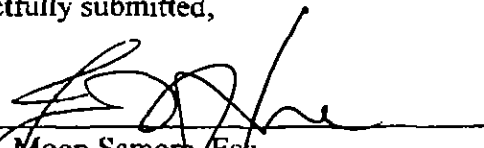
1. From review of the evidence provided by the Prosecution to date, it appears that only the statements of two cooperating witnesses (CW1, CW 8) of the government may implicate Ms. Kirwin in the conspiracy.
2. In assessing the statements of alleged co-conspirators, as well as cooperating witnesses who appear to be co-conspirators, a James Hearing is compelled. United States v. Lopez-Gutierrez, 83 F 3d, 1235 (Tenth Cir. 1996).
3. Ms. Kirwin joins in Mr. Fitzner's objections to the introduction of any cooperating witness or co-conspirator statements not subject to complete cross-examination. Fed R. Ev ID 802 (d) (2) (E). Dennis v. United States, 384 U.S. 855 (1966).

United States v. Jarvis / Kirwin, et al.  
Defendant's Kirwin's Joinder in Defendant  
Fitzner's Motion for Co-Conspirator Statement  
and Supporting Memoranda

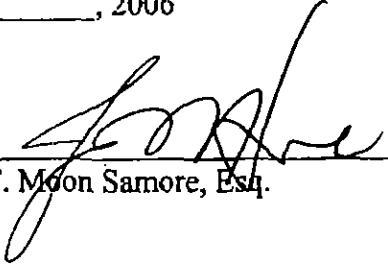
4. The Prosecution by Assistant United States Attorney James Braun, Esq., opposes this Motion but not oppose the need for a James hearing and what, if any, co-conspirator statements must be provided.

WHEREFORE, it is respectfully requested to join in Defendant's Fitzner's prayer for relief and that his Motion be sustained.

Respectfully submitted,

  
\_\_\_\_\_  
John F. Moon Samore, Esq.  
Attorney for Melania Kirwin  
300 Central NW, Suite 2500 W  
Albuquerque, NM 87102  
(505) 244-0450

I hereby certify that a true and correct copy  
of the foregoing was sent by facsimile  
transcription or hand-delivered to the in-box  
of the U.S. Attorney's office this \_\_\_\_ day  
of \_\_\_\_\_, 2006

  
\_\_\_\_\_  
John F. Moon Samore, Esq.